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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,743	01/25/2002	Eric Kolb	DEP604	9907

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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 08/20/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,743

Applicant(s)

KOLB, ERIC

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 02.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Election/Restrictions

Applicant's election without traverse of claims 1-14, 25-27 in Paper No. 04 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-9, 12-14, 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Carpenter et al (5,425,768).

With respect to claim 1, Carpenter et al disclose a prosthesis comprising a stem (20) for implanting at least partially within the medullary canal of a long bone; as best seen in FIG.1; a rod (70) operably associated with the stem; as best seen in FIG.2, a centralizer (40) defining an aperture (74) therein for receiving at least a portion of the rod (70), the centralizer including a surface (72) thereof for guiding the rod into the aperture.

With respect to claims 2-4, 7, Carpenter et al disclose all the limitations; as set forth in columns 3-5, lines 1-68.

With respect to claim 8, Carpenter et al disclose a prosthesis comprising a stem (20) for implanting at least partially within the medullary canal of a long bone, the stem having a first portion and a second portion, the first portion defining a cavity (52) therein; as best seen in FIG.2; a rod (70) at least partially fittable within the cavity of the first

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portion of the stem; as best seen in FIG.2, the rod defining a longitudinal axis thereof; the rod being removable from the stem a first direction along the axis and the rod being restrained within the stem a second direction opposed to the first direction along the axis; as best seen in the FIGS; a centralizer (40) operably associated with the rod.

With respect to claims 9,12-14; Carpenter et al disclose all the limitations; as set forth in columns 3-5, lines 1-68.

With respect to claims 25-27; the method steps, as set forth, would have been inherently carried out in the operation of the device, as set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,6,10,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carpenter et al (5,425,768) in view of Garner (5,978,746).

With respect to claims 5,6,10,11, it is noted that Carpenter et al did not teach of a centralizer having a surface that converges toward the aperture and comprising a funnel; as claimed by applicant. However, in a similar art, Garner evidences the use of a centralizer with a surface that converges toward the aperture and comprising a funnel for aligning the distal end of the femoral stem at a desired position within the natural femur.

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Therefore, given the teaching Garner, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the funnel shape with a surface that converges toward the aperture in the device of Carpenter et al., for aligning the distal end of the femoral stem at a desired position within the natural femur.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,108,439	04-1992	Morscher et al.
6,179,842	01-2001	Spotorno et al.
5,658,350	08-1997	Carbone
5,192,283	03-1993	Ling et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



PEDRO PHILOGENE
PRIMARY EXAMINER

Pedro Philogene
August 18, 2003